

BEFORE THE FAIR EMPLOYMENT AND HOUSING COMMISSION
OF THE STATE OF CALIFORNIA

In the Matter of the Accusation)	
of the)	
)	
DEPARTMENT OF FAIR EMPLOYMENT)	Case No. H 94-95
AND HOUSING)	Q-0619-00
)	H 95-96
v.)	Q-0172-
)	00-h
STEVAN JEVREMOV, Owner,)	97-02
)	
Respondent.)	
-----)	DECISION
-)	
MEREDITH MACKUSICK, Individually)	
and as Guardian ad Litem for)	
MELISSA MACKUSICK, a Minor;)	
ELIZABETH SHOEMAKER,)	
Individually and as Guardian ad)	
Litem for ROBERT BEZIO, a Minor;)	
SARAH BIARD, a Minor; JOSEPH)	
VANCE, a Minor; and MELISSA)	
MACKUSICK, a Minor,)	
)	
Complainants.)	

Hearing Officer Steven C. Owyang heard this matter on behalf of the Fair Employment and Housing Commission on September 18, 1996, in San Diego, California. Guillermo Bass, Staff Counsel, represented the Department of Fair Employment and Housing. Stephen K. Sensenig, Attorney at Law, represented respondent. Complainants Meredith Mackusick and Elizabeth Shoemaker and respondent Stevan Jevremov were present at the hearing. Complainants Robert Bezio, Sarah Biard, Joseph Vance, and Melissa Mackusick did not attend the hearing. The parties did not submit post-hearing briefs. The Commission received the transcript on October 3, 1996, and the case was submitted on that date. Hearing Officer Owyang issued a proposed decision in this matter on November 22, 1996.

The Commission decided not to adopt the proposed decision and, on December 4, 1996, notified the parties of the opportunity to file further argument by January 13, 1997. The

parties did not file further argument, but respondent Jevremov filed a memorandum dated January 2, 1997.

After consideration of the entire record and all arguments, the Commission makes the following findings of fact, determination of issues, and order.

FINDINGS OF FACT

1. On February 14, 1995, complainant Elizabeth Shoemaker (complainant Shoemaker) filed a written, verified complaint with the Department of Fair Employment and Housing (Department). The complaint alleged that, within the preceding year, Stevan Jevremov discriminated against Shoemaker on the basis of her familial status by refusing to show and rent her a house at 4546 Clairemont Avenue, San Diego, in violation of the Fair Employment and Housing Act (Act) (Gov. Code, §12900 et seq.). On September 18, 1995, complainant Shoemaker amended her complaint to add her minor children Robert Bezio, Sarah Biard, and Joseph Vance as complainants.

2. On September 18, 1995, complainant Meredith Mackusick (complainant Mackusick) filed a written, verified complaint, on behalf of himself and his minor child Melissa Mackusick, with the Department. The complaint alleged that, within the preceding year, Stevan Jevremov discriminated against Mackusick and his daughter on the basis of familial status by refusing to show and rent a house at 4546 Clairemont Avenue, San Diego, to Mackusick's co-tenant, Elizabeth Shoemaker.

3. The Department is an administrative agency empowered to issue accusations under Government Code sections 12930, subdivision (h), and 12981, subdivision (a). On February 13, 1996, Nancy C. Gutierrez, in her official capacity as Director of the Department, issued two accusations against respondent Stevan Jevremov (respondent). One accusation was based on the complaint filed by complainant Shoemaker, the second was based on the complaint filed by complainant Mackusick. Both accusations charged respondent with unlawful housing discrimination against Shoemaker, Mackusick, and their minor children, on the basis of their familial status, in violation of the Act. On July 3, 1996, the Commission consolidated the accusations for hearing, pursuant to stipulation by the parties.

4. On September 16, 1996, the Department issued a First Amended Accusation, charging respondent with unlawful housing discrimination on the basis of familial status, in violation of Government Code section 12955, subdivisions (a), (b), (c), and (d). The First Amended Accusation alleged that respondent discriminated against complainants Shoemaker, Mackusick, and their minor children, on the basis of their familial status, by refusing to show and rent them a house at 4546 Clairemont Drive, San Diego.^{1/}

5. Respondent Jevremov was born in Yugoslavia in 1943. He immigrated to the United States in 1964, and moved to San Diego in 1973. Over the years, respondent worked and made real estate investments. By December 1994, respondent owned and managed four single family houses and one duplex. Among these properties were two single family houses at 4544 and 4546 Clairemont Drive, San Diego. 4546 Clairemont is the house at issue in this matter, and is a "housing accommodation" within the meaning of Government Code section 12927, subdivision (d), and a "business establishment" within the meaning of Civil Code section 51. Respondent is the "owner" of 4546 Clairemont within the meaning of Government Code section 12927, subdivision (e).

6. Respondent's houses at 4544 and 4546 Clairemont Drive were vacant and available for rent in December 1994. 4544 Clairemont is an older house, while 4546 Clairemont is a newer house that respondent built behind and on the same lot as 4544 Clairemont. 4546 Clairemont is a three-bedroom unit built above five garages; all the living areas in the unit are on the second floor. The entry to 4546 Clairemont is on a small balcony at the top of a flight of concrete stairs. There is a concrete walkway below the stairs and balcony. The monthly rent on 4544 Clairemont was \$925, with a garage space. The monthly rent on 4546 Clairemont was \$975, which included one garage space.

7. In December 1994, complainant Shoemaker's children Robert Bezio, Sarah Biard, Joseph Vance, and Melissa Mackusick were ages six, four, three, and 18 months, respectively. Complainant Meredith Mackusick is Melissa Mackusick's biological father, but considers Shoemaker's other three children as his own

^{1/} The Department's original accusations, First Amended Accusation, and subsequent pleadings misidentified Melissa Mackusick as "Elizabeth Mackusick."

also. In early December, Shoemaker, Mackusick and the four children moved into Shoemaker's mother's two-bedroom, one-bathroom apartment at 4514 Clairemont Drive, San Diego. At the time, Mackusick was Shoemaker's boyfriend; Mackusick and Shoemaker married in October 1995.

8. Shoemaker's monthly income in December 1994 was approximately \$2,060. Her income was from various sources, including part-time employment, Aid to Families with Dependent Children (AFDC), social security disability payments for one of her children, and child support. Her boyfriend, complainant Mackusick, shared in the AFDC income, but did not have a steady employment income at the time.

9. Shoemaker wanted to move out of her mother's house, but wanted to rent housing nearby because the neighborhood was good and had good schools, and because her mother helped her with childcare. Shoemaker had lived in dilapidated housing in the past, and wanted to provide her family a clean, vermin-free environment. In response to respondent's "For Rent" sign, Shoemaker called respondent and made an appointment to see the house at 4544 Clairemont Drive, which was just a short distance from her mother's house.

10. Either in their initial telephone conversation or at their subsequent meeting, respondent asked Shoemaker if she had any children, and what their ages were. Shoemaker told respondent she had children, and gave their ages.

11. On December 13, 1994, Shoemaker met with respondent to inspect the 4544 Clairemont house. The house was in need of cleaning and repairs and Shoemaker therefore was not interested in renting it. Shoemaker inquired about the newer house in the rear of the lot, 4546 Clairemont, which respondent also had for rent. Respondent told Shoemaker that he would not show her the house because of her small children. Shoemaker told respondent that this was against the law, but respondent replied that as long as he rented 50 percent of his units to people with children, he was in compliance with the law. Shoemaker and respondent argued, and Shoemaker told him she would file a discrimination complaint against him. Respondent still refused to allow Shoemaker to inspect the house, and Shoemaker left.

12. At the time respondent refused to allow Shoemaker to inspect or rent 4546 Clairemont, all his other income properties (except 4544 Clairemont, which was vacant) were rented to families with minor children.

13. Respondent's refusal to show or rent 4546 Clairemont upset and angered Shoemaker. She returned to her mother's house very upset, and paced back and forth, crying and shaking. Shoemaker thought it was not fair that her children were excluded from a home that was suitable for them simply because they were children. She remained upset for several weeks.

14. Shoemaker contacted the Department, and filed her complaint against respondent on February 14, 1995.

15. Respondent's December 13, 1994, refusal to show or rent 4546 Clairemont to Shoemaker caused her and her family to lose the opportunity to live in a house that was particularly attractive for her family. The house was newly-built, very close to her mother, and convenient to her children's pre-school and elementary school.

16. Complainant Mackusick was at home when Shoemaker returned from her meeting with respondent. Mackusick saw that Shoemaker was very upset over respondent's refusal to show Shoemaker the 4546 Clairemont house, and this made Mackusick "fairly upset" also. Mackusick was upset for a couple of days. In the weeks following respondent's refusal to show or rent the house, Mackusick felt that his relationship with Shoemaker was affected "a little bit" because she was somewhat distant and upset.

17. On February 24, 1995, Adelia Mesa, the Department consultant assigned to investigate Shoemaker's complaint, had a telephone conversation with respondent. This was the first conversation respondent had with the Department following Shoemaker's complaint. Mesa did not inform respondent whether the contact was for the purpose of investigation or for conference, conciliation, or persuasion. She told respondent that it was unlawful to refuse to show the house to Shoemaker, and that he was wrong in his belief that he was in compliance with the law if he rented 50 percent of his units to families with children. Upon hearing this, respondent told Mesa he was willing to show and rent the house to Shoemaker and her family. Respondent asked Mesa to have Shoemaker call him to come and inspect the house for rental, and Mesa agreed to do so. For more than three months, however, no one from the Department informed Shoemaker that respondent was willing to show and rent the house to her. At some point in its investigation of Shoemaker's complaint, the Department transferred the case from Mesa to consultant Jose Moreno.

18. Respondent expected to hear from Shoemaker so that he could show her the 4546 Clairemont house, but neither Shoemaker nor the Department called to make such arrangements. 4546 Clairemont remained vacant and available for rent until July 1996.

19. Shoemaker, Mackusick, and their children continued living with Shoemaker's mother until April 1995. Having her family of six living with her mother put a strain on Shoemaker's relationships with her mother, boyfriend, and children. Shoemaker and her mother began feuding and arguing more often. Shoemaker's relationship with Mackusick was also strained, and Mackusick would leave the house for periods of time.

20. While living with Shoemaker's mother, Shoemaker and Mackusick continued to search for suitable housing. They paid \$60 to \$90 in application fees and credit check fees during their search. The evidence did not establish when complainants paid those fees.

21. In April 1995, Shoemaker, Mackusick, and their children moved to a one-room kitchenette unit in a Pacific Beach motel. They moved because of the stress of living with Shoemaker's mother. The motel was in a bad neighborhood.

22. In June 1995, the Department informed Shoemaker that respondent was willing to show and rent her the 4546 Clairemont house. By this time, however, Shoemaker and Mackusick had entered into a lease for another house, and so did not take up respondent's offer. The monthly rent at their new house was \$900.

DETERMINATION OF ISSUES

Liability

The Department asserts that respondent refused to show and rent complainants a housing accommodation at 4546 Clairemont Drive, San Diego, because of complainants' familial status, in violation of Government Code section 12955, subdivisions (a), (b), (c), and (d).

Government Code section 12955, subdivision (a), makes it unlawful for the owner of any housing accommodation to discriminate in the rental of that housing against any person because of the person's familial status. Similarly, Government

Code section 12955, subdivision (d), makes it unlawful for any person subject to the provisions of Civil Code section 51, as that section applies to housing accommodations, to discriminate against any person on the basis of familial status. Such discrimination is established if a preponderance of all the evidence demonstrates that complainants' familial status was a motivating factor for respondent's refusal to show or rent to complainants, even if other factors may have also motivated the refusal to rent. (Gov. Code, §12955.8, subd. (a); DFEH v. The McWay Family Trust (1996) FEHC Dec. No. 96-07, at p. 15 [1996-97 CEB ____].)

Government Code section 12955, subdivision (b), makes it unlawful for the owner of any housing accommodation to make any written or oral inquiry concerning the familial status of any person seeking to rent a housing accommodation. Government Code section 12955, subdivision (c), makes it unlawful for any person to make any statement with respect to the rental of a housing accommodation that indicates any preference, limitation, or discrimination based on familial status.

Respondent acknowledged that he asked Shoemaker if she had children, and their ages. He also acknowledged that he refused to show or rent 4546 Clairemont Drive to Shoemaker because she had small children, and that he made statements to that effect to Shoemaker.

Shoemaker's and respondent's accounts of their telephone conversation and subsequent meeting differ. Respondent testified that he asked Shoemaker about her children when she first called; he recalled that Shoemaker told him she had three children. Shoemaker testified that respondent asked about her children after she had inspected 4544 Clairemont and inquired about 4546 Clairemont. Shoemaker testified that respondent told her that her children "would trash the place." Respondent testified that he refused to rent 4546 Clairemont to Shoemaker because it would be unsafe for her small children, and that he feared they might fall off the concrete stairs or the small balcony to the concrete walkway below. Shoemaker and respondent both testified that respondent expressed his belief that he was in compliance with the law since he had more than 50 percent of his units rented to families with children. Shoemaker testified that respondent said something to the effect that this was a "free country" and that he could do whatever he wanted. Respondent testified that after Shoemaker said she would file a discrimination complaint, he said this was a "free country" and no one could prevent her from doing to whatever she pleased.

We found both Shoemaker and respondent to be credible witnesses. No other witnesses corroborated either Shoemaker's or respondent's versions of the events discussed above. We do not determine whether Shoemaker's or respondent's account is the more accurate, but need not make such a determination, since the evidence is clear that respondent asked Shoemaker about her familial status, made discriminatory statements to Shoemaker, and refused to show or rent 4546 Clairemont to her because of her familial status.^{1/} We therefore find respondent in violation of Government Code section 12955, subdivisions (a), (b), (c), and (d).

Remedy

The Department requests that we order respondent to pay complainants their out-of-pocket losses, their costs and expenses incurred in filing and pursuing their complaint of discrimination, damages for their emotional distress and for lost housing opportunity, and a civil penalty. The Department further requests that we order respondent to cease and desist from discrimination on the basis of familial status, and to develop a policy against discrimination on the basis of familial status.

Initially, we note that it is appropriate here to take into account the fact that respondent offered to show and rent his house to Shoemaker and her family in his first conversation, on February 24, 1995, with the Department after Shoemaker filed her complaint. 4546 Clairemont was still vacant then, and Shoemaker still wanted to rent it. The Department, however, did not inform Shoemaker of respondent's offer until more than three months had passed, in June 1995. By that time, she and her family had lived for several months in cramped conditions with her mother, and then in a small motel room in a bad neighborhood, before finally renting another house. Thus, by the time the Department informed Shoemaker of respondent's willingness to rent

^{2/} Under analogous federal fair housing law, in a case of an outright refusal to rent, a landlord's concern for the safety of a prospective minor tenant is not an affirmative defense to liability for discrimination. (HUD v. Bucha (HUD ALJ 1993) 2 Fair Housing--Fair Lending (P-H) ¶25,046.)

to her, Shoemaker was no longer in a position to rent respondent's house.

We do not doubt that the period between February 24, 1995, and June 1995 was a stressful one for Shoemaker and her family, or that complainants incurred expenses in their ongoing search for housing during that time. But had the Department timely informed Shoemaker of respondent's willingness to rent to her, Shoemaker and her family likely would have been able to move into 4546 Clairemont and avoid the stress and expense they experienced in the months following respondent's offer. We note that there is no evidence that respondent conditioned his offer on Shoemaker dropping her complaint. Under these circumstances, respondent's unconditional offer to show and rent 4546 Clairemont to complainants relieves him of liability for complainants' damages after February 24, 1995. (Cf. HUD v. Quintana (HUD ALJ 1994) 2 Fair Housing--Fair Lending (P-H) ¶25,088; Ford Motor Co. v. EEOC (1982) 485 U.S. 219 [101 S.Ct. 3057, 29 EPD ¶32,852].)

The Department objected to the admission into evidence of the February 24, 1995, discussion between the Department's consultant and respondent, on the ground that their conversation constituted settlement negotiations which are not admissible in evidence. The Department cited Evidence Code section 1152, subdivision (a), in support of its objection. Evidence Code section 1152, subdivision (a), provides that evidence that a person has offered to provide money, an act or a service to another person who has sustained or claims a loss or damage, is inadmissible to prove that the former is liable for the latter's loss or damage. Here, respondent did not offer his conversation with the Department to establish his own liability for complainants' loss or damage, but to show that he corrected the unlawful practice with which he had been charged immediately upon his first contact with the Department. Evidence Code section 1152, subdivision (a), does not preclude the consideration of this evidence.

Moreover, when the Department contacts a person following the filing of a housing discrimination complaint against that person, the Act requires the Department to inform the person, "whether the contact is for the purpose of investigation or conference, conciliation, or persuasion; and if it is for conference, conciliation, or persuasion, the person shall be informed that all matters relating thereto are privileged." (Gov. Code, §12985.) Here, respondent's un rebutted testimony established that the Department did not inform him whether its February 24, 1995, contact was for the purpose of investigation or for conference, conciliation, or persuasion.

Thus, the conversation was not privileged under Government Code section 12984, which otherwise provides that matters connected with any conference, conciliation, or persuasion effort under this part are privileged and may not be received in evidence.

A. Actual Damages

1. Out-of-Pocket Expenses

The Department requests that we order respondent to pay complainants \$200 for their out-of-pocket expenses related to their search for housing. The Department established that complainants paid \$60 to \$90 for application fees and credit checks after they were rejected by respondent. The evidence did not establish what part of those expenses was incurred before February 24, 1995. It is equitable under these circumstances to require respondent to pay \$60.

The Department also seeks to have complainants compensated for their time and gasoline expenses during their housing search. Complainants could not say with any certainty what these expenses were. The evidence on these items was too vague to support an award.

2. Emotional Distress Damages

The Department requests that we order respondent to pay \$1,000 each to complainants Shoemaker and Mackusick to compensate them for the emotional distress they have suffered as a result of respondent's refusal to rent to them. The Department does not seek any emotional distress damages for Shoemaker's and Mackusick's children.

In Walnut Creek Manor v. Fair Employment and Housing Com. (1991) 54 Cal.3d 245 [284 Cal.Rptr. 718, 814 P.2d 704], the California Supreme Court held that the Commission's award of actual damages for emotional distress in a housing discrimination case, although authorized by the Act, violated the judicial powers clause of the California Constitution, article VI, section 1. Walnut Creek Manor involved an earlier version of our statute. After Walnut Creek Manor, the Legislature enacted two major reforms of the Act's housing discrimination provisions (SB 1234, Stats. 1992, c. 182; AB 2244, Stats. 1993, c. 1277) which reiterated its intent, post Walnut Creek Manor, that the Commission award compensatory damages as a remedy for housing discrimination. (DFEH v. The McWay Family Trust, *supra*, 1996-97 CEB ___, at p. 25; DFEH v. Diana D. Light (1995) FEHC Dec. No. 95-05, at p. 14 [1994-95 CEB 2.1]; DFEH v. Osamu Kokado (1995)

FEHC Dec. No. 95-05, at p. 13 [1994-95 CEB 3].) We therefore will consider the Department's request for an award of actual damages for complainants' emotional distress.

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a. Complainant Elizabeth Shoemaker

Respondent's refusal to show or rent 4546 Clairemont upset and angered Shoemaker for several weeks. Respondent's discrimination against Shoemaker also resulted in Shoemaker and her family having to continue living in cramped conditions in her mother's two-bedroom apartment, and to continue her search for housing. We will order respondent to pay Shoemaker \$1,000 as damages for the emotional distress she suffered from the time of her rejection by respondent until February 24, 1995. Respondent will be ordered to pay interest on this amount, accruing at the rate of ten percent per year, compounded annually, from the effective date of this decision until payment. (Code of Civ. Proc. §685.010; DFEH v. Merribrook Apartments (1988) FEHC Dec. No. 88-19, at p. 22 [1988-89 CEB 7].)

As discussed above, we do not order respondent to pay any damages for Shoemaker's emotional distress after February 24, 1995, the date respondent told the Department that he would rent 4546 Clairemont Drive to Shoemaker.

b. Complainant Meredith Mackusick

Respondent and Mackusick had no contact with each other, and Mackusick filed no complaint against respondent until September 1995, months after Shoemaker's complaint and respondent's offer to rent to complainants. Mackusick's own testimony revealed that he did not suffer significant emotional distress as a result of respondent's discrimination, at least in the period up to February 24, 1995. He did testify about the stresses of living with Shoemaker's mother, but much of that was in the period after February 24, 1995. We will order no emotional distress damages for complainant Mackusick.

3. Damages for Lost Housing Opportunity

The Department also requests that we order respondent to pay complainants \$500 as damages for lost housing opportunity.

Damages for lost housing opportunity may be appropriate where, for example, the housing denied to the complainant was safer or closer to public transportation than the housing ultimately acquired by the complainant (cf. HUD v. Kogut (HUD ALJ 1995) 2

Fair Housing--Fair Lending (P-H) ¶25,100); in a quieter neighborhood (cf. HUD v. Ucci (HUD ALJ 1995) 2 Fair Housing--Fair Lending (P-H) ¶25,097); nearer to shopping centers and better schools (cf. HUD v. French (HUD ALJ 1995) 2 Fair Housing--Fair Lending (P-H) ¶25,113); provided areas where children could play (cf. HUD v. Ineichen (HUD ALJ 1995) 2 Fair Housing--Fair Lending (P-H) ¶25,099); or closer to a relative's house (cf. HUD v. Colber (HUD ALJ 1995) 2 Fair Housing--Fair Lending (P-H) ¶25,096), or medical facilities (cf. HUD v. Banai (HUD ALJ 1995) 2 Fair Housing--Fair Lending (P-H) ¶25,095).

Here, respondent's discrimination against complainants cost them the opportunity to live in a newly-built house, very close to Shoemaker's mother, and in a good neighborhood with good schools. On February 25, 1995, however, respondent informed the Department that he would give Shoemaker the opportunity to rent the house. Thus, respondent caused Shoemaker and her family only a temporary loss of housing opportunity. Under these circumstances, we will order respondent to pay complainants \$250 as damages for their lost housing opportunity. Respondent will be ordered to pay interest on this amount, accruing at the rate of ten percent per year, compounded annually, from the effective date of this decision until payment. (Code of Civ. Proc. §685.010; DFEH v. Merribrook Apartments, supra, 1988-89 CEB 7, at p. 22.)

4. Civil Penalty

The Department asks that we order respondent to pay a \$10,000 civil penalty, pursuant to Government Code section 12987, subdivision (a)(3). Although respondent clearly discriminated against complainants on the basis of their familial status, the evidence suggests that respondent harbored no particular bias against having families with children as tenants. At the time of his rejection of complainants, respondent had rented all his other occupied units to families with children. Moreover, respondent corrected his unlawful practice upon his first conversation with the Department, and immediately offered to show and rent his house to Shoemaker and her family. When deciding whether, and in what amount, to award a civil penalty, it is appropriate that we consider a landlord's correction of an offensive policy or decision. (Cf. HUD v. Quintana, supra, ¶25,088; HUD v. Banai, supra, ¶25,095.) We are also mindful of the Department's delay in informing Shoemaker of respondent's offer to rent to her. A civil penalty is not appropriate in this case.

B. Affirmative Relief

The Department requests that we order respondent to cease and desist from discriminatory practices and that we order respondent to develop a policy against discrimination on the basis of familial status. We will issue the cease and desist order, as required by Government Code section 12987, subdivision (a). It is unnecessary to order the additional policy requested by the Department, since the evidence showed that respondent regularly rented his other properties to families with children, and that he corrected his unlawful practice at 4546 Clairemont upon his first contact with the Department following Shoemaker's complaint.

ORDER

1. Respondent Stevan Jevremov shall immediately cease and desist from discrimination based on familial status.

2. Within 60 days of the effective date of this decision, respondent Stevan Jevremov shall pay complainants \$60 as damages for their out-of-pocket expenses. Interest shall accrue on this amount at the rate of ten percent per year, compounded annually, running from the effective date of this decision to the date of payment.

3. Within 60 days of the effective date of this decision, respondent Stevan Jevremov shall pay complainant Elizabeth Shoemaker \$1,000 as damages for emotional distress. Interest shall accrue on this amount at the rate of ten percent per year, compounded annually, running from the effective date of this decision to the date of payment.

4. Within 60 days of the effective date of this decision, respondent Stevan Jevremov shall pay complainants \$250 as damages for lost housing opportunity. Interest shall accrue on this amount at the rate of ten percent per year, compounded annually, running from the effective date of this decision to the date of payment.

5. Within 100 days after the effective date of this decision, respondent Stevan Jevremov shall in writing notify the Department and the Commission of the nature of his compliance with sections one through four of this Order.

6. Complainants shall in writing waive any rights or claims they may have under Civil Code section 52 based on the

events described in this decision. The Department shall serve copies of the waiver on respondent and the Commission.

Any party adversely affected by this decision may seek judicial review of the decision under Government Code section 11523 and Code of Civil Procedure section 1094.5. Any petition for judicial review and related papers should be served on the Department, Commission, respondent and complainants.

This is a precedential decision of the Fair Employment and Housing Commission pursuant to Government Code section 12935, subdivision (h).

DATED: February 5, 1997

LYDIA I. BEEBE

PHYLLIS W. CHENG

MICHAEL M. JOHNSON

CONCURRENCE AND DISSENT

We concur in the Commission's decision, except that we dissent from the Commission's award of emotional distress damages to complainant Shoemaker, and from the designation of this decision as precedential. In our view, the evidence did not establish that respondent caused complainant the emotional distress the Department asserted that she suffered. We therefore would have ordered no emotional distress damages, and would not have designated the decision as precedential.

EUIWON CHOUGH

ANN-MARIE VILICANA